



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 15**

**[Docket No. FR-5986-C-02]**

**RIN 2501-AD81**

**Revision of Freedom of Information Act Regulation; Correction**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** On January 12, 2017, HUD issued a final rule amending HUD's Freedom of Information Act (FOIA) regulation to implement the FOIA Improvement Act of 2016, which enacted a range of procedural changes, including a change to the procedures for withholding information and an amendment to one of the nine FOIA exemptions that authorizes an agency to withhold various records from disclosure. After publication, HUD discovered that a portion of the regulation was not published as intended. Specifically, the published rule deleted several of the nine statutory FOIA disclosure exemptions and duplicated another. HUD also noticed minor technical changes required elsewhere in its regulations. This document corrects HUD's January 12, 2017, final rule and makes the minor technical changes.

**DATES:** Effective: **[Insert date of publication in the Federal Register].**

**FOR FURTHER INFORMATION CONTACT:** Helen Goff Foster, Chief Administrative Officer, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW, Room 6100, Washington, DC 20410-0500, telephone number 1-202-402-6838 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at telephone number 1-800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** On January 12, 2017 (82 FR 3623), HUD issued a final rule amending HUD's Freedom of Information Act (FOIA) regulation at 24 CFR part 15 to implement the FOIA Improvement Act of 2016 (Pub. L. 114-185, approved June 30, 2016) (2016 Act). Upon review of the published rule, HUD determined that § 15.107 was not published as intended. The amendatory instruction excluded three of the nine statutory FOIA exemptions (5 U.S.C. 552(b)) and included a duplicate exemption in § 15.107(b).

HUD's January 12, 2017, final rule sought to restructure § 15.107 by adding paragraph (a) to provide that HUD shall withhold information only if it is reasonably foreseeable that disclosure would harm an interest protected by an exemption, or if disclosure is prohibited by law. HUD also sought to redesignate the undesignated introductory text as paragraph (b), redesignate paragraphs (a) through (i) as (b)(1) through (b)(9), and amend redesignated paragraph (b)(5), the deliberative process privilege, to add a sunset clause after 25 years.

As discussed above, HUD's final rule did not accurately restructure § 15.107 as intended. This final rule restates in whole § 15.107 to reflect the changes required by the 2016 Act to the deliberative process privilege exemption, and restores all other FOIA disclosure exemptions.

In addition, HUD is fixing an incorrect website link in § 15.101, removing two misplaced words in § 15.105, and correcting the number of days a FOIA requester has to appeal an adverse determination in § 15.109(a), consistent with the change HUD made in § 15.105(d)(2)(iv).

#### **List of Subjects in 24 CFR Part 15**

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 15 is corrected by making the following correcting

amendments:

**PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES**

1. The authority for part 15 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 5 U.S.C. 552.

**§ 15.101 [Amended]**

2. In § 15.101(b)(2), remove the link “<http://www.data.gov>” and add in its place the link “<http://www.data.gov>”.

**§ 15.105 [Amended]**

3. In § 15.105, in paragraph (d)(2)(iv) remove the word “and” and in paragraph (d)(2)(v) remove the word “and”.

4. Revise § 15.107 to read as follows:

**§ 15.107 Documents generally protected from disclosure.**

(a) HUD shall withhold information only if HUD reasonably foresees that disclosure would harm an interest protected by an exemption as provided in paragraph (b) of this section, or disclosure is prohibited by law. HUD will consider whether partial disclosure of information is possible whenever HUD determines that a full disclosure of a requested record is not possible, and will take reasonable steps necessary to segregate and release nonexempt information. Nothing in this section requires disclosure of information that is otherwise prohibited from

disclosure by law, or otherwise exempted from disclosure as provided in paragraph (b)(3) of this section.

(b) The FOIA contains nine exemptions (5 U.S.C. 552(b)) that authorize agencies to withhold various records from disclosure. With regard to certain types of records, HUD generally applies the exemptions as follows:

(1) Classified documents. Exemption 1 (5 U.S.C. 552(b)(1)) protects classified national defense and foreign relations information. HUD seldom relies on this exception to withhold documents. However, where applicable, HUD will refer a request for records classified under Executive Order 13526 and the pertinent records to the originating agency for processing. HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of the existence of the information itself is classified.

(2) Internal agency rules and practices. Exemption 2 (5 U.S.C. 552(b)(2)) protects records relating to internal personnel rules and practices.

(3) Information prohibited from disclosure by another statute. Exemption 3 (5 U.S.C. 552(b)(3)) protects information that is prohibited from disclosure by another Federal law. HUD generally will not disclose competitive proposals prior to contract award, competitive proposals that are not set forth or incorporated by reference into the awarded contract (see 41 U.S.C. 4702), or, during the selection process, any covered selection information regarding such selection, either directly or indirectly (see 42 U.S.C. 3537a).

(4) Commercial or financial information. Exemption 4 (5 U.S.C. 552(b)(4)) protects trade secrets and commercial or financial information obtained from a person and privileged or confidential. HUD will handle this type of information as provided by §15.108.

(5) Certain interagency or intra-agency communications. Exemption 5 (5 U.S.C.

552(b)(5)) protects interagency or intra-agency communications that are protected by legal privileges, such as the attorney-client privilege, attorney work-product privilege, or communications reflecting the agency's deliberative process. The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) Personal privacy. Exemption 6 (5 U.S.C. 552(b)(6)) protects information involving matters of personal privacy. This information may include personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Names, addresses, telephone numbers, and email addresses of persons residing in public or assisted housing or of borrowers in FHA-insured single family mortgage transactions generally will not be disclosed.

(7) Law enforcement records. Exemption 7 (5 U.S.C. 552(b)(7)) protects certain records or information compiled for law enforcement purposes. This exemption protects records where the production could reasonably be expected to interfere with enforcement proceedings; for example, the names of individuals who have filed fair housing complaints. The protection of this exemption also encompasses, but is not limited to, information in law enforcement files that could reasonably be expected to constitute an unwarranted invasion of personal privacy; the names of confidential informants, and techniques and procedures for law enforcement investigations, or guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

(8) Supervision of financial institutions. Exemption 8 (5 U.S.C. 552(b)(8)) protects information relating to the supervision of financial institutions. For purposes of Exemption 8, HUD is an “agency responsible for the regulation and supervision of financial institutions” for

purposes of monitoring fair housing compliance.

(9) Wells. Exemption 9 (5 U.S.C. 552(b)(9)) protects geological information on wells.

**§ 15.109 [Amended]**

5. In § 15.109(a), remove the number “30” and add in its place the number “90”.

Dated: May 4, 2017

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**[FR-5986-C-02]**

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